

**Letter of Findings: 01-20150541
Indiana Individual Income Tax
For The Tax Year 2011**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individual provided sufficient documentation to establish that he was not an Indiana resident and therefore not subject to Indiana Income Tax.

ISSUES

I. Indiana Individual Income Tax - Residency.

Authority: IC § 6-3-1-3.5; IC § 6-3-1-12; IC § 6-3-1-13; IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-8.1-5-1; IC § 6-1.1-12-37; [45 IAC 3.1-1-21](#); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012).

Taxpayer protests the Department's proposed assessment of income tax for the 2011 tax year.

II. Tax Administration - Non-Filer Penalty and Interest.

Authority: IC § 6-8.1-10-3.

Taxpayer protests the imposition of the Non-filer penalty and interest.

STATEMENT OF FACTS

Taxpayer moved to Georgia in 2002 and returned to Indiana late 2011. The Indiana Department of Revenue ("Department") determined that Taxpayer was an Indiana resident for the tax year 2011 and that Taxpayer failed to file his 2011 Indiana income tax return. The Department, therefore, issued a proposed assessment for 2011 income tax, penalty, and interest.

Taxpayer protested the assessment. An administrative phone hearing was held. This Letter of Findings ensues and addresses Taxpayer's protest of the proposed assessment for the tax year 2011. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - Residency.

DISCUSSION

The Department assessed Taxpayer income tax for the 2011 tax year on the ground that Taxpayer was an Indiana resident and failed to file a 2011 Indiana income tax return. The Department based its assessment on W-2s and 1099s with an Indiana address. Taxpayer contends that he was not required to file a 2011 Indiana income tax return because he was not an Indiana resident for that year. The issue is whether, for the tax year 2011, Taxpayer was an Indiana resident and was therefore subject to Indiana income tax.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). Thus, a taxpayer is required to provide documentation explaining and supporting their challenge that the Department's assessment is wrong.

Indiana imposes a tax "on the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax. IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayers' taxable income and to calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point.

For Indiana income tax purposes, resident "includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state" IC § 6-3-1-12; see also [45 IAC 3.1-1-21](#). Nonresident is "any person who is not a resident of Indiana." IC § 6-3-1-13.

During the protest process, Taxpayer submitted additional documentation to support the assertion that he was not an Indiana resident and did not owe any Indiana income tax for the tax year 2011. Taxpayer's documentation also demonstrated that he was not in Indiana more than 183 days. Thus, Taxpayer has met the burden of proving the proposed assessment wrong, as required by IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is sustained.

II. Tax Administration - Non-Filer Penalty and Interest.

DISCUSSION

Taxpayer requests that the Department abate the penalty and interest. Pursuant to IC § 6-8.1-10-3(a), the Department may assess a penalty if the taxpayer "fails to file a return on or before the due date"

Taxpayer established that he does not owe the proposed tax assessment, as discussed in Issue I. Taxpayer has been sustained on his protest of the imposition of assessed income tax, therefore, the issue of penalty and interest assessed is moot.

FINDING

Taxpayer's protest of the negligence penalty and interest is sustained.

SUMMARY

For the reasons discussed above, Taxpayer's protest of the Department's proposed assessment for the 2011 tax year is sustained. Taxpayer's protest of the non-filer penalty and interest is moot since Taxpayer does not owe any of the proposed assessment.

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